After The Deal Is Done: Debt Collection and Credit Reporting

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I. INTRODUCTION

After the door-to-door salesman has the contract, after the telemarketer has the credit card number, after the bank has the mortgage, after the car dealer has the lease—in other words, after the deal is done—the consumer becomes the client. No judge advocate engages in legal assistance for any length of time without quickly encountering the first of many clients worrying about a deal-gone-bad. For a lot of those clients, the bad deal means an even worse payment situation, and that may lead to problems with debt collection and credit reporting.

"Complaints to the [Federal Trade] Commission about third-party debt collectors ranked second only to complaints about credit bureaus in 1998."[1] Of the most common complaints by consumers to the Federal Trade Commission as of July 1998, four of the top ten involved debt collection and credit reporting.[2] As long as consumers rely on credit agreements to transact business, those complaints will keep on coming. For a variety of reasons, including easing business transactions and addressing consumer complaints, the federal government has enacted laws governing debt collection and credit reporting. This article discusses the law at its most basic level, examining the process, procedures, and protections of both pieces of legislation—issues about which a legal assistance attorney must be well versed.

II. DEBT COLLECTION

"There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy."[3]

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[1] Federal Trade Commission, *Twenty-First Annual Report to Congress Pursuant to Section 815(a) of the Fair Debt Collection Practices Act* (Mar. 19, 1999) <http://www.ftc.gov/os/statutes/fdcpa/senate99.htm> [hereinafter Federal Trade Commission, *Annual Report*].

[2] *See* Paul K. Davis, Senior Attorney, Atlanta Regional Office of the Federal Trade Commission, Lecture at the 43d Legal Assistance Course, The Judge Advocate General's School, United States Army (Oct. 22, 1998).

[3] 15 U.S.C. § 1692(a).

So begins the Fair Debt Collection Practices Act (FDCPA).[4] The FDCPA was enacted as part of the Consumer Credit Protection Act[5] on September 20, 1977 and last amended on September 30, 1996. Its stated purpose is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."[6] It achieves this purpose by regulating communication between a debt collector and a consumer or a third party.

A. Process

The process of debt collection is a simple one. A consumer and a creditor conduct a business transaction. The consumer fails to pay, and the creditor pursues the consumer for the amount owed. The creditor uses letters, telephone calls, or personal visits. If and when these efforts fail, the creditor pursues repossession or refers the matter to a debt collector. The debt collector uses letters, telephone calls, or personal visits. If and when these efforts fail, the debt collector or creditor pursues legal action against the consumer.

Clomon v. Jackson[7] is discussed below for its holding, but it is raised here for its facts, which illustrate a typical debt collection process. Ms. Clomon owed $9.42 for a magazine subscription to American Family Publishers (AFP), a company known for its sweepstakes and spokesmen. AFP employed NCB Collection Services (NCB) as its debt collection agency on its debts, numbering approximately one million per year. AFP provided electronic information to NCB, which used the information to send form letters. Without a response from the consumer to the first form letter, NCB's computer system automatically sent additional letters. Not only was a response from the consumer necessary to stop the flow of letters, one was necessary before a human being would even review the consumer's file.[8]

Clomon received six form letters, the first from 'Althea Thomas, Account Supervisor,' the other five from 'P.D. Jackson, Attorney at Law, General Counsel, NCB Collection Services.' Jackson was an attorney, a part-time lawyer for NCB. He approved the form of the letters sent to Clomon and other consumers, but he never actually signed them. In fact, he never had any personal knowledge of Clomon or her file.[9] Eventually, Clomon prevailed on summary judgment and then again on appeal claiming that Jackson made a

[4] *Id*. § 1692.
[5] *Id*. § 1601.
[6] *Id*. § 1692(e).
[7] 988 F.2d 1314 (2nd Cir. 1993).
[8] *See id.* at 1316.
[9] *See id.* at 1316-17.

"false, deceptive, or misleading representation"[10] in violation of the FDCPA by allowing the use of his letterhead and signature on the form letters.[11]

B. Protections[12]

Consumer protection under the FDCPA is contingent upon the Act's definitions, and effective legal assistance on this issue demands a clear understanding of the key definitions in the statute. The legislation focuses its protective power on the communication between the debtor and collector. As a result, the statute's definition of the word "communication" is a logical place to begin an evaluation of the legislation. A *communication* is "the conveying of information regarding a debt directly or indirectly to any person through any medium."[13] It does not, however, include a legal notice, a legal filing or service, or any contact about a filed lawsuit.[14] With regard to the parties, a *consumer* is "any natural person obligated or allegedly obligated to pay any debt."[15] A *creditor* is

> any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.[16]

By contrast, a *debt collector* is defined as "[a] person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another."[17] A debt collector, under the terms of the FDCPA, includes any employee of a debt collector, any debt collector in the United States,[18] any attorney who regularly engages in debt collection

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[10] 15 U.S.C. § 1692e.
[11] *See* Clomon, 988 F.2d at 1320-21.
[12] 15 U.S.C. § 1692n. It should be noted that the protections discussed are based on provisions of federal law. States can and do offer more extensive legal protections for consumers from improper actions by debt collectors and creditors, but a discussion of those provisions is beyond the scope of this article. Legal assistance attorneys should be familiar with such protections, if any, offered by the state or states in which their clients conduct their business.
[13] 15 U.S.C. § 1692a(2).
[14] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,097, 50,101 (1988). This FTC Staff Commentary is not binding but merely interpretive. *Id*.
[15] 15 U.S.C. § 1692a(3).
[16] *Id*. § 1692a(4).
[17] *Id*. § 1692a(6).
[18] The location of the consumer is irrelevant. *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,102.

activities,[19] and any creditor that collects debts in a name other than its own.[20] However, it does not include a creditor, an employee of a creditor, an attorney of a creditor who collects debts in the creditor's name, or a creditor that collects debts in its own name. Nor does it include a government employee acting in an official capacity or an attorney who represents a consumer against a debt collector.[21] The focus of the controversy is, of course, the *debt*, which is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment."[22] A debt can include overdue bills, dishonored checks,[23] and delinquent student loans, while unpaid taxes[24] or alimony, child support,[25] tort, or nonmonetary claims are not considered debt.[26]

When a consumer alleges an FDCPA violation by a debt collector, the standard used to evaluate the claim is the "least sophisticated consumer."[27] As discussed by the Second Circuit Court of Appeals in *Clomon*,

> The most widely accepted test for determining whether a collection letter violates § 1692e is an objective standard based on the "least sophisticated consumer." This standard has also been adopted by all federal appellate courts that have considered the issue. . . . The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.[28]

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[19] *See* Heintz v. Jenkins, 514 U.S. 291, 292 (1995). The FTC has recommended to Congress that an attorney engaging in only legal, as opposed to collection, practices not be covered by the FDCPA as a debt collector. Federal Trade Commission, *Annual Report*, *supra* note 1.

[20] *See* 15 U.S.C. § 1692a(6).

[21] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,103.

[22] 15 U.S.C. § 1692a(5).

[23] *See, e.g.*, Snow v. Riddle, 143 F.3d 1350, 1353 (10th Cir. 1998) (holding that a dishonored check is a debt for the purposes of the FDCPA in that a debt is created when one obtains goods and gives a check in return).

[24] *See, e.g.*, Staub v. Harris, 626 F.2d 275, 279 (3d Cir. 1980) (holding that unpaid taxes are not a debt for the purposes of the FDCPA because there is no traditional commercial relationship between taxpayer and state and the tax debtor is not a consumer debtor).

[25] *See, e.g.*, Mabe v. G.C. Services Ltd. Partnership, 32 F.3d 86, 88 (4th Cir. 1994) (holding that child support is not a debt for the purposes of the FDCPA because it is not incurred to receive consumer goods or services).

[26] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,102.

[27] *See, e.g.*, Smith v. Computer Credit, Inc., 167 F.3d 1052, 1054 (6th Cir. 1999); Savino v. Computer Credit, Inc., 164 F.3d 81, 85 (2d Cir. 1998); Graziano v. Harrison, 950 F.2d 107, 111 (3d Cir. 1991); Jeter v. Credit Bureau, Inc., 760 F.2d 1168, 1175 (11th Cir. 1985) (using standard of "least sophisticated consumer"). *But see* Gammon v. G.C. Services Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994) (setting forth standard of "unsophisticated consumer").

[28] Clomon v. Jackson, 988 F.2d 1314, 1318 (2nd Cir. 1993).

In *Clomon*, the court also discussed the least sophisticated consumer standard in the context of consumer protection law. Quoting the United States Supreme Court, the court noted that, "[l]aws are made to protect the trusting as well as the suspicious."[29] Comparing the FDCPA to the Federal Trade Commission Act (FTCA),[30] the court reiterated a point it made in an earlier case that the law "was not made 'for the protection of experts, but for the public—that vast multitude which includes the ignorant, the unthinking and the credulous.'"[31]

The court reasoned that adopting the least sophisticated consumer standard better served the purpose of consumer protection laws by providing a "standard for evaluating deceptions that [did] not rely on assumptions about the 'average' or 'normal' consumer."[32] The court acknowledged the sensibility of the use of this standard given the ease with which people of below average sophistication or intelligence fall prey to misleading or fraudulent schemes.[33]

Recognizing that even the least sophisticated consumer standard has a limit, the court wrote, "in crafting a norm that protects the naïve and the credulous the courts have carefully preserved the concept of reasonableness. . . [E]ven the 'least sophisticated consumer' can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care."[34] Relying on the standard, the court concluded that its dual purpose was served in that it adequately protected all

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[29] *Id.* (quoting Federal Trade Commission v. Standard Education Society, 302 U.S. 112, 116 (1937)).

[30] 15 U.S.C. § 41 (1999).

[31] Clomon, 988 F.2d at 1318-19 (quoting Charles of the Ritz Distributors Corp. v. Federal Trade Commission, 143 F.2d 676, 679 (2nd Cir. 1944) (quoting Florence Manufacturing Co. v. J.C. Dowd & Co., 178 F. 73, 75 (2d Cir. 1910))).

[32] Clomon, 988 F.2d at 1319.

[33] *See id.*

[34] *Id.* The Seventh Circuit Court of Appeals deals with the question of a reasonable but least sophisticated consumer by applying an "unsophisticated consumer" standard.

> Literally, the least sophisticated consumer is not merely "below average," he is the very last rung on the sophistication ladder. Stated another way, he is the single most unsophisticated consumer who exists. Even assuming that he would be willing to do so, such a consumer would likely not be able to read a collection notice with care (or at all), let alone interpret it in a reasonable fashion. Courts which use the "least sophisticated consumer" test, however, routinely blend in the element of reasonableness. *See* Clomon, 988 F.2d at 1319. In maintaining the principles behind the enactment of the FDCPA, we believe a simpler and less confusing formulation of a standard designed to protect those consumers of below-average sophistication or intelligence should be adopted. Thus, we will use the term, "unsophisticated," instead of the phrase, "least sophisticated," to describe the hypothetical consumer whose reasonable perceptions will be used to determine if collection messages are deceptive or misleading.

Gammon, 27 F.3d at 1257.

consumers, "even the naïve and trusting," against deceptive debt collection practices, and it, likewise, protected debt collectors against liability for unusual interpretations of collection notices.[35] Regardless of the legal theory surrounding use of the standard, the least sophisticated consumer standard marks the dividing line that a debt collector cannot cross in an attempt to collect a debt from a consumer. Along this line lie the FDCPA requirements of and restrictions on communication between debt collector and consumer or third party.

1. Requirements

The requirements placed on the debt collector are fairly straightforward. A debt collector must, as a basic matter, provide proper notice of a debt. With the initial communication to a consumer,[36] or within five days of such, the debt collector must send a written notice of the amount of the debt; the name of the creditor; a statement that the debt will be assumed valid unless disputed by the consumer within thirty days;[37] and a statement that, if disputed,

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[35] Clomon, 988 F.2d at 1320. Again, the Seventh Circuit Court of Appeals perceives the issue from a slightly different angle.

> We reiterate that an unsophisticated consumer standard [as opposed to a least sophisticated consumer standard] protects the consumer who is uninformed, naïve, or trusting, yet it admits an objective element of reasonableness. The reasonableness element in turn shields complying debt collectors from liability for unrealistic or peculiar interpretations of collection letters.

Gammon, 27 F.3d at 1257.

The court applied the unsophisticated consumer standard in *Bartlett v. Heibl*, wherein the court wrote, "the letter to Bartlett was confusing; nor . . . could we doubt that it was confusing—we found it so, and do not like to think of ourselves as your average unsophisticated consumer." Bartlett v. Heibl, 128 F.3d 497, 501 (7th Cir. 1997). Interestingly, the court went on to say, "Judges too often tell defendants what the defendants cannot do without indicating what they can do, thus engendering legal uncertainty that foments further litigation." *Id*. at 501. The court then included in its opinion a sample letter for debt-collecting attorneys to use and closed with a warning.

> We cannot require debt collectors to use "our" form. But of course if they depart from it, they do so at their risk. Debt collectors who want to avoid suits by disgruntled debtors standing on their statutory rights would be well advised to stick close to the form that we have drafted. It will be a safe haven for them, at least in the Seventh Circuit.

Id. at 502.

[36] *See, e.g.*, Frey v. Gangwish, 970 F.2d 1516, 1518-19 (6th Cir. 1992) (holding that a debt collector is required to provide the validation notice in its initial communication with the consumer, even if the debt collector has already won a judgment against the consumer).

[37] *See, e.g.*, Russell v. Equifax A.R.S., 74 F.3d 30, 34-36 (2d Cir. 1996) (holding that a first notice violated the FDCPA which provided only ten days to pay the debt in contradiction of

a verification will be obtained and sent.[38] Until the consumer disputes the debt, the debt collector may continue collection efforts, even within the 30-day period. If, within the thirty days, the consumer disputes the debt, then the debt collector must cease collection efforts. In other words, letters and telephone calls in pursuit of collection must stop until the debt is verified. If the consumer registers a dispute, the debt collector may still take legal action against the consumer, even within the 30-day period.[39] The failure of a consumer to dispute the debt is not an admission of liability.[40]

There is an additional requirement of a "mini-Miranda" notice.[41] In its initial written communication with the consumer,[42] the debt collector must state that it is attempting to collect a debt and that any information obtained will be used for that purpose. Failure to provide this notice constitutes a false or misleading representation.[43]

2. Restrictions

A debt collector may contact a third party for location information about a consumer. Location information is limited to a consumer's home address, home telephone number, and work address.[44] When the debt collector makes contact, he must identify himself, state his purpose of confirming or correcting location information, and not identify his employer unless asked. The debt collector may not make contact with a specific third party more than once unless by request or for correction.[45] In addition, the debt collector may not communicate by post card or indicate on mail the nature of his business or the communication. For location information as well as other purposes, the debt collector must contact the consumer's attorney if the attorney is known,[46]

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the 30-day notice to dispute it and a similar second notice provided only five additional days, five fewer than the thirty days required by law).

[38] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,097, 50,108 (1988).

[39] *See id.* at 50,109.

[40] *See* 15 U.S.C. § 1692g(c).

[41] *See* Federal Trade Commission, *Annual Report*, *supra* note 1.

[42] *See, e.g.*, Frey, 970 F.2d at 1519-20 (holding that a debt collector is required to provide the mini-Miranda notice in its initial communication with the consumer, even if the debt collector has already won a judgment against the consumer).

[43] *See* 15 U.S.C. § 1692e(11).

[44] *See id.* § 1692a(7).

[45] *See id.* § 1692b(3).

[46] Knowledge of a consumer's attorney is debt-specific. If the consumer notifies the debt collector of legal representation for one debt, then the consumer must re-notify the debt collector for subsequent debts that come to light. Graziano v. Harrison, 950 F.2d 107, 113 (3d Cir. 1991).

can be located, and is responsive.[47] A creditor's knowledge of a consumer's attorney is not imputed to a debt collector.[48]

In addition, a debt collector may not contact a third party about the debt without prior consent by the consumer, permission of a court, or a reasonable need to enforce a judgment. Otherwise, the debt collector's contact is restricted to the consumer, consumer's attorney, consumer reporting agency if permitted by law, creditor, creditor's attorney, and debt collector's attorney.[49] Even if there is no mention of the debt,[50] a debt collector may not contact a consumer, without the consumer's consent or a court's permission, at any unusual or inconvenient time or place or at the consumer's workplace if the consumer's employer prohibits such contact. Before 8 *a.m.* and after 9 *p.m.* is presumed inconvenient, while Sunday is not so presumed.[51] These same restrictions apply to contacting the consumer's spouse or the parent of a minor consumer.[52] As with the purpose of acquiring location information, the debt collector must contact the consumer's attorney if the attorney is known, can be located, and is responsive.[53]

A debt collector also cannot contact a consumer if the consumer has refused, in writing, to pay the debt or if the consumer has asked for no further contact. The debt collector may then contact the consumer only to notify the consumer that the collection is stopped, that further remedies may be invoked, or that further remedies will be invoked.[54] Under no circumstances can a debt collector harass, oppress, or abuse any person in pursuit of collection.[55] This prohibition covers not only the consumer but also third parties (e.g., spouse, parent, friend, neighbor, coworker, or boss). The list of debt collector proscriptions is not all-encompassing, but it includes the use or threat of violence or harm to person, reputation, or property; the use of obscene or profane or abusive language; the publication of consumer names other than to a consumer reporting agency; and the repeated or continuous calling to annoy, abuse, or harass.[56] An example of such a prohibition is unnecessary calls, which might, for example, include leaving telephone messages with a

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[47] *See* 15 U.S.C. § 1692b(6).
[48] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,097, 50,104 (1988).
[49] *See* 15 U.S.C. § 1692c(b).
[50] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,103.
[51] *See id.* at 50,104.
[52] *See* 15 U.S.C. § 1692c(d).
[53] *See id*. § 1692c(a).
[54] *See id*. § 1692c(c).
[55] "This was the complaint we heard most frequently in 1998." Federal Trade Commission, *Annual Report*, *supra* note 1.
[56] *See* 15 U.S.C. § 1692d.

consumer's neighbor for the consumer when the debt collector has the consumer's telephone number.[57]

A debt collector is also precluded, though not surprisingly, from using false, deceptive, or misleading representations.[58] As with harassment, this prohibition covers third parties as well as the consumer. Again, the list presented is not exhaustive, but it includes implying affiliation with a governmental agency[59] or a consumer reporting agency; threatening arrest, imprisonment, property seizure,[60] or wage garnishment unless the action is lawful and intended;[61] threatening any illegal or unintended[62] action; threatening the communication of false information; and giving a false name.[63] It also includes lying about the character, amount, or legal status of the debt; lying about whether the contact is from an attorney; lying about the consumer's criminal status; and lying about whether the communication is or is not a legal document and does or does not require action.[64] Though, if a debt collector resorts to legal action, it may only be brought in the judicial district where the consumer resides,[65] the judicial district where the contract in dispute was signed, or the judicial district where the real estate in dispute is situated.[66]

Finally, a debt collector is not permitted to use unfair or unconscionable means to secure collection. A method of debt collection may be unfair if it causes injury that is substantial, not outweighed by countervailing benefits to consumers or competition, and not reasonably

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[57] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,104.

[58] *See* 15 U.S.C. § 1692e.

[59] *See, e.g.*, Gammon v. GC Services Ltd. Partnership, 27 F.3d 1254, 1258 (holding that a statement by a debt collector to a consumer regarding services the debt collector provided to federal and state governments to collect delinquent taxes implied to the consumer that the debt collector could cause tax problems for the consumer).

[60] *See, e.g.*, Crossley v. Lieberman, 868 F.2d 566, 572 (3d Cir. 1989) (holding that a statement by a debt collector to an elderly, widowed consumer of a nonexistent lawsuit and foreclosure was an illegal threat).

[61] Lack of intent may be inferred when the amount of the debt is so small as to make the action totally unfeasible. Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,106.

[62] *See, e.g.*, United States v. National Financial Services, Inc., 98 F.3d 131, 138-139 (4th Cir. 1996) (holding that a threat of legal action was illegal because the debt collector had not retained an attorney to institute a lawsuit).

[63] *See* 15 U.S.C. § 1692e(14).

[64] *See* 15 U.S.C. § 1692e. *See, e.g.*, Schweizer v. Trans Union Corp., 136 F.3d 233, 238 (2nd Cir. 1998) (holding that a letter from a debt collector, made to look like a telegram, did not communicate a false sense of urgency because the debt collector had not used words of urgency in the letter itself).

[65] *See, e.g.*, Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507, 1515 (9th Cir. 1994) (holding that the debt collector improperly filed suit in one county when the consumer resided in another, although the two counties are encompassed by one federal judicial district).

[66] *See* 15 U.S.C. § 1692i.

avoidable by the consumer.[67] Unfair or unconscionable practices include collecting more than authorized by the debt agreement or law, misusing a postdated check, charging for collect calls or telegram fees, and threatening repossession when repossession is not legal or intended.[68]

C. Penalties

The FDCPA provides penalties for someone wronged by a debt collector, who might be a consumer or a third party (e.g., spouse, parent, relative, or friend).[69] A wronged party may seek damages against a debt collector in federal or state court[70] within one year of the date of the violation. A debt collector may be held liable for actual damages, including out-of-pocket expenses as well as damages for humiliation, embarrassment, anguish, and distress.[71] Furthermore, a debt collector may be held liable for statutory damages[72] up to $1,000 per individual or $500,000 per class plus attorney's fees and court costs.[73] The amount of damages depends on the frequency, persistence, and nature of the debt collector's noncompliance as well as the extent to which it was intentional.[74] Generally, the debt collector is held to a standard of strict liability unless the debt collector demonstrates by a preponderance of the evidence that the violation was unintentional and caused by a bona fide error.[75]

In addition, an FDCPA violation may be an unfair and deceptive act or practice in violation of the FTCA.[76] Suspected violations should be reported to the Commission, which can pursue violators and report violations to Congress.[77] For example, in October 1998, the Commission announced a

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[67] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,107.
[68] 15 U.S.C. § 1692f.
[69] *See, e.g.*, Wright v. Financial Services of Norwalk, Inc., 22 F.3d 647, 649-50 (6th Cir. 1994) (holding that executrix of a consumer had standing to sue a debt collector).
[70] *See, e.g.*, Bates v. C & S Adjusters, Inc., 980 F.2d 865, 867-68 (2nd Cir. 1992) (holding that the proper venue was the state to which the consumer had moved and had his mail forwarded, not the state where the creditor and debt collector were located and where the consumer's mail had been addressed).
[71] *See* Statements of General Policy or Interpretation, Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. at 50,109.
[72] *See, e.g.*, Bartlett v. Heibl, 128 F.3d 497, 499 (7th Cir. 1997) (holding that statutory damages do not require that the consumer actually have suffered any harm).
[73] *See* 15 U.S.C. § 1692k(a)(2).
[74] *See id.* § 1692k(b).
[75] *See id.* § 1692k(c). *See, e.g.*, Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507, 1514 (9th Cir. 1994) (holding that there was no bona fide error because the debt collector did not prove that there were "reasonable preventive procedures").
[76] *See* 15 U.S.C. § 1692l. The FTCA is codified at 15 U.S.C. § 41 (1998).
[77] *See* 15 U.S.C. § 1692m.

settlement in which Nationwide Credit, Inc., agreed to pay a $1 million civil penalty, the largest ever in a debt collection case.[78]

D. Practice Notes

There are several practical considerations that would almost certainly be helpful to the legal assistance attorney.

The legal assistance attorney should be cautious about representing herself as a consumer's attorney, especially if contacting a debt collector in writing or via telephone. Unless the attorney makes it clear that the debt collector should contact the consumer directly, the debt collector is obligated to restrict contact to the attorney.[79] In the Air Force, the limits on the legal assistance program combined with the frequent moves of attorneys and client-consumers make it difficult for a legal assistance attorney to take on long-term representation of a client with debt collection problems.

Consider having a form letter for a client to use when replying to initial communication from a debt collector. The letter should cite the FDCPA and should be signed by the consumer, not the attorney. It should demand verification of the debt[80] and give convenient days and times for contacting the consumer at home. It should also state that the debt collector should not contact the consumer at the workplace. Depending on the consumer's specific situation, the letter might also contain a refusal to pay the debt or a request for no further contact.[81] In today's computer-reliant society, maintain such a letter (or, for that matter, letters) on a computer and preparing for the client while the client waits, should be almost as easy as the touch of a button.

Be sure to advise a client who is experiencing financial difficulties to use the resources available to him (e.g., the assistance of his first sergeant and/or commander and the counseling services of the Family Support Center). Remind the client that a military member is expected to pay just financial obligations in a proper and timely manner.[82]

Inform commanders and first sergeants about procedures regarding airmen's indebtedness. A commander should process a complaint received about an airman's indebtedness,[83] but the commander should not give out

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[78] "Many of the alleged violations are the same as those addressed in a settlement with the Commission that NCI entered into in 1992; the company paid a civil penalty of $100,000 at that time." Federal Trade Commission, *Annual Report*, *supra* note 1.
[79] *See* 15 U.S.C. § 1692c(a)(2).
[80] *See id*. § 1692g.
[81] *See id*. § 1692c.
[82] Air Force Instruction 36-2906, Personal Financial Responsibility ¶ 7.1 (Jan. 1, 1998) [hereinafter AFI 36-2906]. Violations of this responsibility could result in criminal liability for the military member. *See* 10 U.S.C. § 934, UNIF. CODE OF MILITARY JUSTICE art. 134 (1998); MANUAL FOR COURTS-MARTIAL, United States, pt. IV, ¶ 71 (1998 ed.) [hereinafter MCM].
[83] AFI 36-2906, *supra* note 82, at ¶¶ 3.1, 3.4.

information (e.g., the airman's address[84] or action being taken against the airman).[85] The Air Force does not have the authority to force payment (e.g., order from a commander) without a court order,[86] but it may take action against an airman who fails in his financial responsibilities.[87] It is worth noting that an airman, like any other citizen, has the right to file for bankruptcy and that a bankruptcy filing in and of itself cannot be grounds to take action against the airman.[88]

III. CREDIT REPORTING

While any deal-gone-bad has immediate undesirable consequences, such as a consumer getting embroiled in the process of debt collection, it has a potential long-term aftereffect—the credit report. A negative credit report can keep a consumer from having a credit card, obtaining an insurance policy, buying a house, getting a job, and more. Because a credit report can have such a powerful impact, its importance cannot be understated, and the law that regulates credit reporting, the Fair Credit Reporting Act (FCRA),[89] should not, indeed cannot, be ignored.

A. Process

Credit reports are generated from a process of information exchange. A consumer and a creditor conduct a business transaction. The creditor reports the business transaction to a consumer reporting agency. The consumer reporting agency compiles the consumer's business transactions, as reported by all creditors, as well as information of public record and produces a credit report. Creditors update the information, and the consumer reporting agency updates the credit report. The consumer reporting agency provides the credit report to would-be creditors and other business entities, who may request the credit report and use the information it contains only for the purposes allowed by law.

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[84] *See id.* ¶ 4.6.
[85] *See id.* ¶ 3.1.4.
[86] *See id.* ¶ 3.4.2.
[87] *See id.* ¶ 3.1.6.
[88] Adverse action is appropriate only if there is continued financial irresponsibility, fraud, deceit, evasion, false promises, or circumstances indicating a deliberate nonpayment or grossly indifferent attitude. *Id.* ¶ 5.1.2; 10 U.S.C. § 934, UNIF. CODE OF MILITARY JUSTICE art. 134; MCM, pt. IV, ¶ 71.
[89] 15 U.S.C. § 1681 (1999). The FCRA was most recently amended by the Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104-208, div A, tit. II, subtit. D, ch. 1, § 2401, 1104 Stat. 3009-426 (1996) (amending 15 U.S.C. § 1681b (1999)), the Intelligence Authorization Act for Fiscal Year 1998, Pub. L. No. 105-107, 111 Stat. 2248 (1997), and the Consumer Reporting Employment Clarification Act of 1998, Pub. L. No. 105-347, § 1, 112 Stat. 3208 (1998) (amending 15 U.S.C. § 1601).

The FCRA requires that credit reports be accurate, updated, and provided and used for limited purposes. It places responsibility on all parties involved in the process of credit reporting—consumers should review their credit reports for accuracy and report errors; those who furnish information must provide accurate, updated information; consumer reporting agencies must produce accurate, updated reports and provide them only for the purposes permitted by the FCRA; and those who use the information must do so only for the permitted purposes.

B. Protections[90]

As with the FDCPA, the protections available under the FCRA depend on the definitions of some of the key aspects of a credit-based transaction. A *person* is any individual, business, government, or other entity.[91] In the context of the FCRA, the term "person" might refer to a furnisher, supplier, or user of credit information, though it usually does not refer to the subject of the information. A *consumer* is, quite simply, an individual,[92] usually the subject of a credit report. A *consumer reporting agency* is any person that regularly engages in assembling or evaluating consumer credit or other information to furnish consumer reports to third parties.[93] In general, the term does not include those people that provide information to consumer reporting agencies.[94] A *consumer report*[95] is any communication, oral or written, of any information by a consumer reporting agency about a consumer's credit, character, reputation, or lifestyle for the purpose of establishing eligibility for credit, employment, or any other authorized purpose.[96] A report is a consumer, or credit, report if a consumer reporting agency collects information for the report for one of the purposes covered by the FCRA, if the consumer reporting agency expects the report to be used for an FCRA purpose, or if a requestor

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[90] *See* 15 U.S.C. § 1681t. As with the FDCPA, states may offer more extensive legal protections for consumers than are available under the FCRA. Although a discussion of state law is beyond the scope of this article, legal assistance attorneys should be familiar with such protections, if any, offered by the state or states in which their clients conduct business.

[91] *Id*. § 1681a(b).

[92] *Id*. § 1681a(c).

[93] *Id*. § 1681a(f). This article uses the term *consumer reporting agency* to include a "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis." *Id*. § 1681a(p).

[94] *See, e.g.,* DiGianni v. Stern's, 26 F.3d 346, 348-49 (2nd Cir. 1994) (holding that a retail department store that provided information on the store's customers to consumer reporting agencies was not itself a consumer reporting agency).

[95] The FCRA, despite its title, refers to consumer reports. In keeping with common terminology and everyday understanding, this article uses the term "credit report."

[96] 15 U.S.C. § 1681a(d). A consumer report may be an *investigative consumer report* if it includes information on a consumer's character, reputation, characteristics, or lifestyle obtained through personal interviews. *Id*. § 1681a(e). There are stricter disclosure requirements for investigative consumer reports than for consumer reports. *See Id*. § 1681d.

uses the report for an FCRA purpose.[97] *Employment purposes* include employment, promotion, reassignment, and retention.[98]

Of course, issues under the FCRA usually arise only after credit has been denied or refused. Under the FCRA, this is referred to as an *adverse action*, which is defined more specifically as

> a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such terms does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.[99]

It also means a denial, cancellation, increased charge, reduction, or change of insurance; an adverse employment decision; a denial, cancellation, increased charge, or change of government license; and an action taken in connection with a consumer-initiated transaction and adverse to the consumer's interests.[100]

1. Disclosures

Adverse action occurs only after a consumer's credit information is disclosed. Thus, the FCRA is specific as to when a consumer reporting agency may furnish a consumer report and to whom. There are certain circumstances that allow for the release of a consumer report—in response to a court order or federal grand jury subpoena; per the written consent of the consumer-subject of the report; to a person who intends to use the report for a consumer's credit, employment, insurance, or governmental license or a legitimate business need[101] for a business transaction initiated by the consumer or for the review of a consumer's account; and in response to a child support award or enforcement agency.[102] Aside from the permissible purposes of credit reports, there are conditions on their release. A credit report that contains medical information may not be released for employment purposes or for a credit or insurance

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[97] *See*, *e.g.*, Ippolito v. WNS, Inc., 864 F.2d 440, 448-50 (7th Cir. 1988) (holding that evidence of a non-FCRA purpose for a report request does not determine whether the report is a "consumer report").

[98] 15 U.S.C. § 1681a(h). *See*, *e.g.*, Zamora v. Valley Federal Savings & Loan Association of Grand Junction, 811 F.2d 1368, 1370 (10th Cir. 1987) (holding that employment purposes do not allow an employer to obtain the credit report of an employee's spouse).

[99] 15 U.S.C. § 1691(d)(6).

[100] *See id*. § 1681a(k).

[101] *See*, *e.g.*, Estiverne v. Sak's Fifth Avenue, 9 F.3d 1171, 1173-74 (5th Cir. 1993) (holding that a report from a check approval company was a credit report and that a store's obtaining the report to determine whether to accept or reject a consumer's check was a legitimate business need).

[102] *See* 15 U.S.C. § 1681b(a).

transaction not initiated by the consumer unless the consumer consents to the release.[103]

When used for employment purposes, a credit report may be released only to a person who certifies to the consumer reporting agency that it will be used properly. Proper use means that the person has notified the consumer in writing that the report may be procured and that the consumer has consented in writing to the procurement. In addition, proper use means that, before a person takes adverse action based on the report, the person must provide the consumer a copy of the report and a written description of the consumer's FCRA rights.[104]

When used for a credit or insurance transaction that is not initiated by the consumer, a credit report may be released only if the consumer authorizes the release or if two conditions are met: (1) the transaction is a firm offer and (2) the consumer may but has elected not to have his name and address excluded from the list provided by the consumer reporting agency to the person initiating the transaction.[105] If released, the credit report is released in redacted form.[106] Under the FCRA, a consumer has the right not to have information released for credit or insurance transactions that the consumer does not initiate. A consumer reporting agency must maintain a system by which a consumer may notify the consumer reporting agency of non-consent for release using a toll-free telephone number.[107] In addition, a consumer reporting agency that operates nationwide must maintain such a system jointly with other nationwide consumer reporting agencies.[108] A consumer reporting agency may furnish a consumer's name, address and former addresses, and employment and former employment to a governmental agency.[109] There are additional provisions for disclosure to the Federal Bureau of Investigation for counterintelligence purposes.[110]

2. Duties

Every entity in the chain of consumer information has responsibilities for establishing and maintaining the integrity of that information. Any weak link may result in a violation of the FCRA and an injury to the consumer. The duties imposed by the FCRA must be taken seriously by those providing and procuring consumer information. The duties in this regard are primarily concerned with the accuracy of the information. For example, a person who

[103] *See id*. § 1681b(g).
[104] *See id*. § 1681b(b).
[105] *See id.* § 1681b(c)(1).
[106] *See id.* § 1681b(c)(2).
[107] *See id.* § 1681b(c)(5).
[108] *See id.* § 1681b(e).
[109] *See id*. § 1681f.
[110] *See id*. § 1681u.

furnishes information to a consumer reporting agency may not furnish the information if the person knows or consciously avoids knowing that the information is inaccurate or if the person has correctly been notified by the consumer that the information is inaccurate. A person who regularly furnishes information to a consumer reporting agency has a duty to correct and update such information as well as a duty to notify the consumer reporting agency of disputes, accounts voluntarily closed by the consumer, and delinquent accounts.[111]

A consumer reporting agency must follow reasonable procedures to assure the accuracy of the credit reports it prepares.[112] A credit report may not contain information about bankruptcies older than ten years or judgments or paid tax liens, accounts under collection, criminal records of arrest, indictment, or conviction, or any other adverse information older than seven years. However, a report may contain any and all of this information if it will be used in connection with a credit transaction or life insurance policy of $150,000 or more or for employment with an annual salary of $75,000 or more.[113] A credit report must note if a consumer voluntarily closes a credit account.[114] It must also contain information on the failure of a consumer to pay overdue child support if the information is provided or verified by a governmental agency and is less than seven years old.[115] A consumer reporting agency must provide to furnishers and users of information a notice of their FCRA responsibilities.[116] To that end, the Federal Trade Commission provides notices for consumer reporting agencies' distribution.[117]

A prospective user of FCRA information must identify himself, certify his purpose, and certify that he has no purpose other than the one stated. A consumer reporting agency must then make a reasonable effort to verify the identity and purpose of the prospective user before furnishing a credit report.[118] A user may not resell a credit report or any information therein, unless the user discloses to the providing consumer reporting agency the identity of the subsequent user and the subsequent user's purpose for the information. In addition, the user and the subsequent user take on the same obligations of the consumer reporting agency and the user, respectively, in that each must certify

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[111] *See id*. § 1681s-2(a).
[112] *See id*. § 1681e(b). *See, e.g.*, Spence v. TRW, Inc., 92 F.3d 380, 383 (6th Cir. 1996) (holding that a consumer reporting agency has a duty of reasonable care and that the consumer reporting agency did not violate its duty by providing information about a debt that the consumer had not paid and had not informed the consumer reporting agency was disputed).
[113] *See* 15 U.S.C. § 1681c.
[114] *Id*. § 1681c(e).
[115] *Id*. § 1681s-1.
[116] *Id*. § 1681e(d).
[117] *See* 16 C.F.R. pt. 601, apps. B, C (1999). The FTC notices of a furnisher's and a user's responsibilities under the FCRA are available at http://www.ftc.gov.
[118] *See* 15 U.S.C. § 1681e(a).

and verify identity and purpose.[119] If a user takes adverse action based on a credit report,[120] the user must notify the consumer of the adverse action; the name, address, and telephone number of the consumer reporting agency; and the consumer's rights to obtain a free copy of the report and to dispute information contained in the report.[121] If a person takes adverse action based on credit information obtained from a non-consumer reporting agency third party or corporate affiliate, the person must notify the consumer of his right to request within sixty days the reasons for the action and the nature of the information.[122] If a user makes a written credit or insurance solicitation, uninitiated by the consumer and based on a credit report, then the user must make a statement to the consumer about the use of the credit report, the conditional nature of the offer, and the right of the consumer to have information withheld from release.[123]

B. Remedies

In addition to the right to access his credit report, a consumer has a number of other important rights under the FCRA. Upon request, a consumer is entitled to a substantial amount of information from a consumer reporting agency: the information on him at the time of his request with the exception of credit or other risk scores or predictors, the sources of the information with the exception of sources for an investigative consumer report, the identification of users and end-users, their addresses, and their telephone numbers in the previous two years for employment purposes and in the previous year for any other purpose, the dates, payees, and amounts of checks used for adverse characterization, and a record of inquiries for a credit or insurance transaction not initiated by the consumer in the previous year. A consumer reporting agency must also provide a written summary of the consumer's FCRA rights[124] and, if the consumer reporting agency operates nationwide, a toll-free telephone number that may be used to contact the consumer reporting agency.[125]

Generally, a consumer reporting agency may charge up to $8 for a disclosure to a consumer unless the consumer requests the disclosure within 60 days of an adverse action, in which case the disclosure is available at no charge. A consumer is also entitled to one free disclosure annually if the

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[119] *See id*. § 1681e(e).
[120] The information in the credit report that is the basis of the adverse action need not be derogatory or negative. Fischl v. General Motors Acceptance Corp., 708 F.2d 143, 149-50 (5th Cir. 1983).
[121] *See* 15 U.S.C. § 1681m(a).
[122] *See id*. § 1681m(b).
[123] *See id*. § 1681m(d).
[124] *See* 16 C.F.R. pt. 601, app. A. The FTC notice of a consumer's rights under the FCRA is available at http://www.ftc.gov.
[125] *See* 15 U.S.C. § 1681g.

consumer is unemployed and intends to apply for employment in the next 60 days, receives public welfare assistance, or has reason to believe that the consumer reporting agency has inaccurate information because of fraud.[126]

If a consumer reporting agency is notified that a consumer disputes information in his credit report, the consumer reporting agency must indicate the dispute in the credit report.[127] In addition, after the consumer reporting agency receives notice of the dispute from the consumer, the consumer reporting agency has thirty days to reinvestigate the dispute free of charge and record its status or delete it from the file.[128] In the context of such an investigation, the consumer reporting agency has five days to notify the furnisher of the disputed information of the dispute and provide relevant information.[129]

Once a furnisher of information is notified of a dispute, the furnisher must investigate, report the results of the investigation to the consumer reporting agency, and, if the information disputed is found to be incomplete or inaccurate, report the results to all nationwide consumer reporting agencies that received the information. The furnisher must comply with the same time limits as the consumer reporting agency.[130] The consumer reporting agency has five days to notify the consumer of the results of a completed reinvestigation. If the consumer reporting agency finds that the disputed information is inaccurate, incomplete, or unverifiable, the consumer reporting agency must modify or delete it.[131] If deleted, the information may not be reinserted unless the furnisher certifies its completeness and accuracy. Also, if disputed information is deleted, the consumer may request that the consumer reporting agency notify any person who has received a report in the previous two years for employment purposes or in the previous six months for any other purpose of the deletion.[132] If deleted information is later reinserted, the consumer reporting agency must notify the consumer within five days of the reinsertion. The consumer reporting agency may terminate the reinvestigation if it reasonably determines that the dispute is frivolous or irrelevant or if the consumer has not provided sufficient information to investigate. The consumer reporting agency must notify the consumer within five days of such a determination and provide reasons and identification of missing information.

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[126] *See id*. § 1681j.
[127] *See id*. § 1681c(f).
[128] The 30-day period may be extended for up to fifteen days if the consumer provides the consumer reporting agency additional information in that period unless, in that period, the consumer reporting agency finds that the disputed information is inaccurate, incomplete, or unverifiable. *Id*. § 1681i(a)(1).
[129] *See id*. § 1681i(a)(2).
[130] *See id*. § 1681s-2(b).
[131] A nationwide consumer reporting agency must implement an automated system that reports incomplete or inaccurate information to all nationwide consumer reporting agencies. *Id*. § 1681i(a)(5)(D).
[132] *See id*. § 1681i(d).

If the reinvestigation does not resolve the dispute, then the consumer may file a brief statement that is provided, in whole or in summary, with any subsequent report containing the disputed information.[133]

A consumer reporting agency cannot stop a user of a credit report from disclosing the report's contents to the consumer-subject of the report if the user has taken adverse action against the consumer based on the report.[134] If a consumer believes that a consumer reporting agency or a furnisher or user of credit information has violated the FCRA, the consumer has two years[135] to seek damages in court.[136] There are several causes of action depending upon the circumstances surrounding the case that may be asserted, though damages may be limited. A person[137] who willfully fails to comply with the FCRA is liable for actual damages between $100 and $1,000.[138] A person who obtains a credit report under false pretenses[139] or knowingly without a permissible purpose is liable for the greater of actual damages or $1,000. Punitive damages,[140] court costs, and attorney's fees could also be awarded in the appropriate case.[141] A person who negligently fails to comply with the FCRA is liable for actual damages,[142] court costs, and attorney's fees, though punitive

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[133] *See id*. § 1681i.

[134] *See id*. § 1681e(c).

[135] The two-year period begins on the date that liability arises unless "a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter . . . ." *Id*. § 1681p. *See, e.g.*, Clark v. State Farm Fire & Casualty Insurance Co., 54 F.3d 669, 671-73 (10th Cir. 1995) (holding that there was no discovery exception to the two-year statute of limitations).

[136] 15 U.S.C. § 1681p.

[137] *See, e.g.*, Mone v. Dranow, 945 F.2d 306, 308 (9th Cir. 1991) (holding that a corporate president and chief executive officer was liable for his actions under the FCRA even if he was acting in his corporate capacity); Yohay v. City of Alexandria Employees Credit Union, Inc., 827 F.2d 967, 972-73 (4th Cir. 1987) (holding that an employer was liable for the actions of its employee under the FCRA even if the employee was not acting in an official capacity).

[138] 15 U.S.C. § 1681n(a)(1).

[139] *See, e.g.*, Comeaux v. Brown & Williamson Tobacco Co., 915 F.2d 1264, 1273-74 (9th Cir. 1990) (holding that a user obtained a credit report under false pretenses when it obtained the report for the permissible purpose of employment but actually used the report for another, impermissible purpose).

[140] *See, e.g.*, Fischl v. General Motors Acceptance Corp., 708 F.2d 143, 151 (5th Cir. 1983) (holding that negligent noncompliance allows actual damages and attorney's fees; willful noncompliance allows punitive damages, including damages from humiliation, mental distress, and injury to reputation; and a showing of malice is not necessary).

[141] 15 U.S.C. § 1681n. *See, e.g.*, Casella v. Equifax Credit Info. Services, 56 F.3d 469, 474 (2d Cir. 1995) (holding that actual damages did not include the attorney fees incurred by the consumer merely to notify consumer reporting agencies of a dispute, rather than to force their compliance with the FCRA).

[142] *See, e.g.*, Stevenson v. TRW Inc., 987 F.2d 288, 296-97 (5th Cir. 1993) (holding that a consumer could recover actual damages for mental anguish).

damages would probably not be possible.[143] By contrast, a consumer may not bring an action for defamation, invasion of privacy, or negligence against a furnisher, a consumer reporting agency, or a user based on information exchanged pursuant to the FCRA unless the information was false and furnished with malice or willful intent to injure the consumer.[144] Criminal liability may be imposed on a person who knowingly and willfully obtains credit information from a consumer reporting agency under false pretenses[145] or an employee of a consumer reporting agency who knowingly and willfully provide credit information to an unauthorized user.[146]

As with the FDCPA, the Federal Trade Commission is responsible for enforcement of the FCRA. Suspected violations should be reported to the Commission, which can pursue civil penalties for violations pursuant to the FTCA.[147] Other federal agencies have FCRA enforcement authority in certain circumstances,[148] and states may bring actions pursuant to the FCRA.[149]

C. Practice Notes

Not surprisingly, there are a few practical considerations for the legal assistance attorney that would undoubtedly prove helpful when advising clients on the FCRA.

Advise clients to beware of fraud. As business transactions become more automated, electronic information is increasingly valuable and, ironically, more easily obtained. More and more deals are done based on personal information and not on a face-to-face meeting. A consumer can now obtain credit over the telephone and via the Internet with simply a name, date of birth, and Social Security number.[150] Such information is available for the taking—many consumers provide it without question or hesitation, many documents (e.g., driver's license) list it, and many people do not protect it. The same holds true of bank account and credit card information.

Clients should be advised to obtain and review their credit reports from all three major consumer reporting agencies on an annual basis.[151] If a client has experienced a credit problem, the client might be able to receive the reports for free. Otherwise, the client may have to pay up to $8 per report, depending

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[143] *See* 15 U.S.C. § 1681.
[144] *See id*. § 1681h(e).
[145] *See id*. § 1681q.
[146] *See id*. § 1681r.
[147] *See id*. § 1681s.
[148] *See id*. § 1681s(b).
[149] *See id*. § 1681s(c).
[150] For an overview of Internet consumer privacy issues, see Major R. Ken Pippin, *Consumer Privacy on the Internet: Its "Surfer Beware"*, 47 A.F. L. REV. 125 (1999).
[151] Equifax can be contacted at (800) 997-2493 or http://www.equifax.com. Experian (formerly TRW) can be contacted at (888) 397-3742 or http://www.experian.com. Transunion can be contacted at (800) 888-4213 or http://www.transunion.com.

on the client's state of residence for mailing purposes.[152] Even $24 is well worth the information. Only by regular review of credit reports can a consumer know that his credit history is correct and that he is not the victim of credit fraud.

Clients should also be counseled to consider closing credit accounts that they do not use or need. Accounts that go unused usually go unmonitored and thus are ripe for fraud and abuse. A credit report lists open and closed accounts and account activity as well as creditor information (e.g., mailing addresses).

Be aware that if a client is a consumer involved in the process of debt collection, the client should communicate with the debt collector, the creditor, and the major consumer reporting agencies. If a client is a victim of fraud, the client should communicate with the major consumer reporting agencies, all creditors, the Social Security Administration, and local law enforcement. The client should file a police report, alert the major consumer reporting agencies and all creditors (listed on the credit reports), and contact the Social Security Administration about a change of Social Security number.

IV. CONCLUSION

Consumers are doing deals, and those deals are often going bad, making those consumers potential clients of legal assistance attorneys. For evidence of consumers' financial difficulties, one need look no further than the filing of personal bankruptcies, which hit an all-time high in 1998 and numbered 1,352,030 in the 12-month period ending June 30, 1999.[153]

When assisting financially troubled clients, attorneys need to know and use the consumer protection statutes, including all sections of the Consumer Credit Protection Act. When assisting clients who are experiencing problems with debt collection and/or credit reporting, which are often linked, attorneys must explore all the protections and possibilities available under the Fair Debt Collection Practices Act and the Fair Credit Reporting Act. This article has described them, but more information is readily available, especially on the Internet, where the Federal Trade Commission, state attorney generals, and consumer groups maintain and update pages. A zealous advocate can use this wealth of information to the benefit of his disadvantaged client, the consumer on the back end of a bad deal.

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[152] The fee that a consumer reporting agency may charge for a credit report is set by law and tied to the Consumer Price Index. 15 U.S.C. § 1681j(a). The present fee is $8 per report except for residents of Connecticut ($5), Maine and Minnesota ($3), and Colorado, Georgia, Maryland, Massachusetts, New Jersey, and Vermont (free). Fee information is available on the web sites of the consumer reporting agencies. *See supra* note 151.

[153] Associated Press, *Personal Bankruptcies Decline* (Aug. 10, 1999) <http://www.nytimes.com/aponline/f/AF-Bankruptcy-Filings.html>.